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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,376	04/15/2004	Carl Erik Hansen	112701-574	6618
29157	7590	09/18/2007		
BELL, BOYD & LLOYD LLP				
P.O. Box 1135				
CHICAGO, IL 60690				
EXAMINER				
PADEN, CAROLYN A				
ART UNIT		PAPER NUMBER		
1761				
NOTIFICATION DATE		DELIVERY MODE		
09/18/2007		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary	Application No. 10/824,376	Applicant(s) HANSEN ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ripper in view of Rusoff (2,835,890) for reasons of record.

Applicant argues that Ripper is a non-traditional method of making chocolate. No difference is seen between the conventional method of Ripper and the conventional method of the claims. Ripper was patented in 1978 and is considered to be a conventional method. Applicant argues that Rusoff teaches away from the present invention because Rusoff is directed to an artificial chocolate flavor. No difference is seen between the non-cocoa/dairy flavor of the claims and the flavor of Rusoff. Applicant argues that the inclusion of the Rusoff would not manipulate chocolate flavor. No unobvious difference is seen between the recitations of "manipulating flavor" instead of "fortifying, substituting or extending flavor".

Claims 1-4, 6 and 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ripper in view of Kleinert (3,769,030) or Watterson (5,676,993) for reasons of record.

Applicant argues that Ripper and Kleinert are non-traditional methods of making chocolate. No difference is seen between the conventional method of Ripper or Kleinert and the conventional method of the claims. Ripper was patented in 1978 while Kleinert was patented in 1973 and are considered to be conventional methods. Applicant argues that Watterson teaches away from the present invention because Watterson is directed to an enhancing cacao flavor. Applicant argues that the inclusion of the Watterson would not manipulate chocolate flavor. No unobvious difference is seen between the recitations of "manipulating flavor" instead of "enhancing flavor". Applicant argues that Kleinert is a cocoa flavor rather than a non-cocoa flavor. This has been considered but is not persuasive. The Maillard reaction product disclosed at column 3, lines 48-59 is not a cocoa flavor per se.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ripper in view of Russoff as applied to claims 1-5 and 11-20 above, and further in view of Eggen (4,343,818) for reasons of record.

Applicants' arguments are directed to the independent claims.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ripper in view of Rusoff as applied to claims 1-5 and 11-20 above, and further in view of Hansen (5,888,562) for reasons of record.

Applicants' arguments are directed to the independent claims.


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on (571) 272-1401 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 9-13-07
PRIMARY EXAMINER
GROUP 1200 1761